

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

SULFO TECHNOLOGIES, L.L.C.,

Plaintiff-Appellant,

v

THOMAS E. SCHMOYER, SURFACE  
ACTIVATION TECHNOLOGY, L.L.C., and SO3  
PLUS, L.L.C.,

Defendants-Appellees.

---

UNPUBLISHED

February 8, 2011

No. 294246

Oakland Circuit Court

LC No. 08-091167-CB

Before: TALBOT, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

This case deals with two companies seeking to perfect a commercially viable use of the chemical process referred to as “sulfonation.”<sup>1</sup> Sulfo Technologies, L.L.C. (hereinafter “Sulfo”) alleges that its previous shareholder, Thomas E. Schmoyer, in complicity with Surface Activation Technology, L.L.C. (hereinafter “SAT”) and SO3 Plus, L.L.C., misappropriated Sulfo’s trade secrets and were in violation of an arbitration award and judgment regarding commercial applications of this chemical process. The trial court ruled that the arbitration agreement was not applicable to SAT and also found in favor of Schmoyer on Sulfo’s contentions regarding the misappropriation of trade secrets and use of confidential information. We affirm.

Sulfo contends that the trial court’s opinion and order fails to meet the requirements of MCR 2.517(A). Sulfo argues that the trial court’s findings of fact and conclusions of law are inadequate because they fail to sufficiently delineate the trial court’s reasoning and lack specificity regarding what aspects of Sulfo’s sulfonation process was proprietary or confidential.

In discussing the adequacy of judicial fact finding, our Supreme Court has indicated:

---

<sup>1</sup> The trial court defined sulfonation as “the system or process of using sulfur trioxide (SO3) to interact with another chemical, such as a polymer like plastic to alter the chemical properties of the plastic.”

The primary purpose of both administrative and judicial fact finding is to facilitate appellate review. “Findings of fact in a nonjury case serve a function paralleling the judge’s charge in a jury case, that of revealing the law applied by the fact finder.” Findings of fact map the path taken by a trial court through conflicting evidence. Brevity in the articulation of factual findings is not fatal, as long as the appellate body is not forced to draw so many inferences that its review becomes merely speculative.<sup>2</sup>

The trial court provided a 12-page written opinion and order. The opinion outlined the issues for trial, the history of the litigants and referenced pertinent wording of the arbitration award that served as the basis for Sulfo’s argument that the award and subsequent judgment were being violated. The trial court was not required, as Sulfo implies, to recount every piece of evidence or testimony. In the six-page exposition of testimony, the trial court summarized the information it found to be pertinent. The trial court also cited the Michigan Uniform Trade Secrets Act (“MUTSA”), MCL 445.1901 *et seq.* as the applicable law and clearly concluded that Sulfo failed to prove violation of the statute with regard to the disclosure of trade secrets and its reasoning for reaching that conclusion.

The trial court specifically defined the sulfonation process, successfully demonstrating its understanding of its rather complex chemistry and applicability in the manufacturing process. It distinguished between the general process and the various “subtleties” in application. The trial court explained that information pertaining to sulfonation and the sulfonation process is readily available in the public domain and that numerous publications and patents are accessible and available for review. The same was found to be true regarding Sulfo’s vendors and customers, all of which are readily identifiable on the internet and within the manufacturing community. As such, it was reasonable for the trial court to conclude that Sulfo had failed to demonstrate that Schmoyer used any proprietary information in his work with SAT. Contrary to Sulfo’s contention, the trial court’s ruling is exceptionally detailed regarding its reasoning and conclusions.

To be in compliance with the court rule, the findings of the trial court need only be brief, definite, and pertinent, and must demonstrate an awareness of the issues and correctly apply the law.<sup>3</sup> Because the trial court’s findings of fact and conclusions of law were more than sufficient to show that it was aware of the issues and correctly applied the law, this Court’s review would not be facilitated by requiring any further explanation. As the trial court issued a detailed opinion that adequately delineated its findings of fact and conclusions of law, we reject Sulfo’s contention that the opinion failed to meet the requirements of MCR 2.517(A).

---

<sup>2</sup> *Woody v Cello-Foil Prod*, 450 Mich 588, 599; 546 NW2d 226 (1996) (internal citations and footnotes omitted).

<sup>3</sup> *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

Sulfo next contends the trial court's opinion and order fails to give full effect to the earlier arbitration award and judgment. At the outset it is important to review the precise wording contained in the arbitration award. In pertinent part, the arbitration award precluded:

Using and/or disseminating, in any manner that is not for the sole and exclusive benefit of Sulfo and with the prior permission of Sulfo, *any confidential or proprietary information of Sulfo acquired by Mr. Schmoyer as a result of his being, or having been, a member of Sulfo.* [Emphasis added.]

Of further relevance is the wording in the award that Schmoyer remained subject to the provisions of Sulfo's operating agreement, but that such agreement only required "members to maintain the confidentiality of Confidential Information" as it is later defined, and requires them to "use Confidential Information only for the benefit of the LLC." The arbitration award defined what constituted propriety information as "information, which Mr. Schmoyer could not have known of or otherwise engaged in but for his association with Sulfo." Based on the language and wording of the arbitration award, Sulfo's contention that Schmoyer was precluded from the use of any knowledge he retained regarding sulfonation or the process of sulfonation is overly broad and expansive. To constrict Schmoyer's use of general information regarding the chemical process and manufacturing use of sulfonation would be to, effectively, impose a life-long preclusion on his involvement or participation in a specific field of manufacturing. Such a prohibition would be beyond the confines contemplated by the actual non-competition agreement executed by Schmoyer and Sulfo and act as an improper restraint of trade.

As with any document, the arbitration award and the judgment affirming it are to be enforced or interpreted in accordance with the language contained therein. It is a well-recognized precept that "[c]lear and unambiguous language . . . must be given its plain meaning and enforced as written."<sup>4</sup> Furthermore, a trial court maintains the authority to enforce its own directives.<sup>5</sup> The judgment to be enforced, which incorporates the arbitration award, speaks only to the preclusion of using "any confidential or proprietary information of Sulfo acquired by Mr. Schmoyer as a result of being, or having been, a member of Sulfo." To suggest, as Sulfo does, that this language encompasses general information regarding sulfonation or the sulfonation process that is known or ascertainable to the public at large is inconsistent with the arbitration language, as incorporated by the trial court in the judgment adopting that award.

The same is true with regard to the language of the operating agreement. Schmoyer was only required to "maintain the confidentiality of Confidential information," which is defined as "[i]nformation that [Sulfo] maintains in confidence and that is [sic] actual or potential economic value to [Sulfo] because it is not generally known to others and is not readily ascertainable by

---

<sup>4</sup> *Greater Bethesda Healing Springs Ministry*, 282 Mich App 410, 412; 766 NW2d 874 (2009), citing *Fleet Business Credit, LLC v Krapohl Ford Lincoln Mercury Co*, 274 Mich App 584, 591; 735 NW2d 644 (2007).

<sup>5</sup> *Walworth v Wimmer*, 200 Mich App 562, 564; 504 NW2d 708 (1993).

them.” It is disingenuous on the part of Sulfo to assert that information on a chemical process that is readily available and accessible within the public domain through the internet, written publications, vendor websites and patents could be construed as comprising “confidential information.” Further, if Sulfo actually did purport to purchase Schmoyer’s “general knowledge or information” regarding sulfonation that is commensurately available to the public through other sources, it is to be assumed that Sulfo merely made a bad deal by paying money for information that could have been obtained for free.

A close reading of the arbitration award also demonstrates that Schmoyer’s “general knowledge” was not encompassed by the ruling that Schmoyer used “information . . . which could not have been known of or otherwise engaged in . . . .” Reviewing the arbitrator’s findings of fact it is noteworthy that Schmoyer had written materials and equipment pertaining to sulfonation that he had acquired from Dow Corning before his involvement with Sulfo. The operating agreement signed by Schmoyer with Sulfo indicated that Schmoyer “agreed to sell all of his right, title and interest in the sulfonation technology described in Attachment ‘A’ of Exhibit ‘a’ of the Operating Agreement.” “Attachment A” was comprised “of a Bill of Sale and a Bankruptcy Schedule B . . . . listing various items.” The reference to the “items” sold by Schmoyer included the concrete or tangible things he had obtained from Dow. According to the arbitrator’s findings, when Schmoyer left Sulfo he removed files and equipment and attempted to change designation of ownership on a pending patent. The arbitrator determined that such actions were “not authorized.” The restraining order that was entered when the first lawsuit was initiated by Sulfo prohibited Schmoyer and others “from communicating with any actual or prospective customers of Sulfo or any other person regarding the business affairs of Sulfo by using confidential information or trade secrets.” Contrary to Sulfo’s position regarding the proscriptive nature of the arbitration award language, there is a conspicuous absence of any reference to Schmoyer’s “general knowledge” regarding sulfonation. Rather, in all of the documents and evidence in this matter, prohibitions and restraints on Schmoyer were limited to his use of “confidential” information or “trade secrets” garnered during his time with Sulfo.

The trial court’s ruling in this matter is consistent not only with the language of the arbitration award and judgment, but also with the law applicable between employers and employees in the related area of noncompetition agreements. While it is recognized that an employer may have a “reasonable competitive business interest” to protect through such agreements they cannot be so broad or encompassing to result in the restraint or monopolization of trade or commerce.<sup>6</sup> Rulings by our Supreme Court regarding the validity of noncompetition agreements are consistent with the trial court’s determination in this instance. As discussed by the Court:

While an employee is entitled to the unrestricted use of general information acquired during the course of his employment or information generally known in the trade or readily ascertainable, confidential information,

---

<sup>6</sup> MCL 445.774a.

including information regarding customers constitutes property of the employer and may be protected. . . .

\* \* \*

“It has been uniformly held that general knowledge, skill, or facility acquired through training or experience while working for an employer appertain exclusively to the employee. The fact that they were acquired or developed during the employment does not, by itself, give the employer a sufficient interest to support a restraining covenant, even though the on-the-job training has been extensive and costly.”<sup>7</sup>

While “[r]easonable covenants may protect such legitimate interests as trade secrets, confidential information, close contact with the employer’s customers or customer lists, or cost factors and pricing . . . . [a]n employer may not unreasonably prohibit future use of general knowledge or skill.”<sup>8</sup> This was acknowledged during the trial by Lawrence Gladchun, one of the owners of Sulfo, when he stated that Schmoyer “can use nonconfidential information for whatever purpose he chooses to.”

Of greater significance is the fact that Sulfo failed to demonstrate that Schmoyer or SAT had or used any confidential or proprietary information in designing and operating their own sulfonation system. While the chemical process of sulfonation is readily ascertainable to anyone, it is the manufacturing or application of the process to specific parts or types of plastic that is subject to variance and subtle manipulation. The process of sulfonating a plastic gas can to prevent permeation by carbon based fuels would be vastly different from the use of this same general process to prepare plastic parts for metallization or plating. As both Sulfo and SAT acknowledge, the commercial use of sulfonation involves trial and error to ascertain the right timing for exposure and saturation levels to successfully treat an item based on its unique configuration, material and size. Any confidential or proprietary information would necessarily be related to determinations or adjustments to the process to account for the composition and size, or any other specific characteristics of the item for sulfonation and the unusual or unique configuration of the equipment used in the process.

At trial Sulfo did not come forward with any evidence to contradict the testimony of John Wallace, William Aikens, Brad Radke and Schmoyer that Schmoyer had no technical input into the design, construction, development or running of the sulfonation equipment or process constructed by SAT. All of these individuals consistently and repetitively averred that Schmoyer served as a conduit to ask questions of vendors and procure information, making inquiries or contact only at the direction of Wallace and Radke and that Schmoyer did not initiate or

---

<sup>7</sup> *Follmer Rudzewicz & Co v Kosco*, 420 Mich 394, 402 n 4; 362 NW2d 676 (1984).

<sup>8</sup> *Certified Restoration Dry Cleaning Network, LLC v Tenke Corp*, 511 F3d 535, 547 (CA 6, 2007) (citation omitted).

determine the content of communications with vendors or have any say or input in the selection of equipment procured or how the individual components were engineered and assembled. Theodore Fattal, Jr., a salesman with Duall, which fabricates ventilation and air pollution control systems, testified that the equipment they supplied to SAT was different with regard to the “sizing, the air flow” that it provided to Sulfo. Fattal indicated that similar equipment was also provided to other manufacturing companies in the plating industry. It was also uncontradicted that although both SAT and Sulfo used Linde/Air Gas, that Wallace “chose this vendor and . . . chose the machinery . . . and approved the machinery” for SAT. Radke testified that many components had changed regarding the SAT system, but that the basic configuration or equipment remained stable. Radke, as a “special machine builder,” asserted that he was able to ascertain how the equipment was to be put together based on his experience and the various manuals accompanying the equipment, along with independent research on the internet regarding sulfonation. He denied any conversations with or input by Schmoyer regarding what machines to purchase or how they were to be configured for SAT.

With regard to the sulfonation process, John McCaskie, Ph.D. indicated that he had been involved in research in the treatment of plastics and various applications since the 1970’s. He asserted that the process used by the Chemithon generator, which both Sulfo and SAT use, was developed in the “mid-nineteenth century.” McCaskie contradicted Sulfo’s contention that the temperature and concentration of certain chemicals comprise their “secrets.” Aikens specifically denied input by Schmoyer, stating:

I learned nothing about this process that – from Tom Schmoyer that wasn’t available from research in publicly available sources or well known within the industry.

Other than mere conjecture, Sulfo has failed to produce any evidence that Schmoyer, SAT or others used or disclosed confidential or proprietary information. Sulfo assumes that because SAT used the same vendors to procure equipment to develop a sulfonation process that the configuration of the equipment or nuances of use were the product of Sulfo’s earlier development of a sulfonation system or process. This is merely an assumption and based solely on speculation as testimony demonstrated that the vendors used by both companies are well-known within the manufacturing industry and that various members of SAT had previous experience or interactions with these vendors for other applications or that the vendor’s own web-sites provided information to the general public. The equipment procured was not unique as the components were described as “off the shelf” and were recommended by the vendor based on the purchaser’s own specifications. The actual sulfonation of parts by either Sulfo or SAT was subject to trial and error and there was no demonstration that either company was treating the same parts for the same purpose, resulting in the use of trial and error rather than mere duplication. Ultimately, Sulfo challenges the credibility of SAT’s witnesses, but such a determination is within the purview of the trial court and not subject to this Court’s review.<sup>9</sup> To

---

<sup>9</sup> *Amb v Kalamazoo Co Rd Comm*, 255 Mich App 637, 651; 662 NW2d 424 (2003).

the extent that Sulfo suggests insufficiency of the evidence to support the trial court's determination, such an assertion must be rejected given the plethora of testimony and evidence submitted consistent with the trial court's ruling.

Sulfo also takes issue with the trial court's failure to enforce language of the arbitration award purporting to restrain not only Schmoyer, but "all others acting in concert with him" from the "use and/or dissemination . . . of . . . any confidential or proprietary information of Sulfo acquired by Mr. Schmoyer as a result of his being, or having been, a member of Sulfo." Because Sulfo has failed to demonstrate a violation by Schmoyer of the arbitration award it is impossible to find infringement by "others acting in concert with him."

Next, Sulfo contends that the trial court erred by concluding, as a matter of law, that a person cannot contract for the sale or non-use of knowledge that exists within the public domain. Sulfo's assertion of error on this issue is problematic on several levels. First, Sulfo fails to cite to specific language in the trial court's order or opinion regarding its contention that it ruled that Schmoyer "could not have sold his 'knowledge' of sulfonation to Sulfo." In actuality, the trial court found that Schmoyer had not violated the arbitration award or judgment because Sulfo failed to demonstrate his use or dissemination of any confidential or proprietary information obtained through his association with Sulfo. At most, the trial court indicated:

[Sulfo] has failed to establish that Schmoyer took anything beyond the knowledge he acquired from his years in the industry—this information was not purchased by the bill of sale since it was not proprietary or confidential since the information is in the public domain.

Any contention that such a statement by the trial court is erroneous is irrelevant and rendered moot by our determination that Schmoyer was only restricted from sharing confidential or proprietary information by the arbitration award and that Sulfo had failed to demonstrate any such violation. The assertion by Sulfo that the trial court failed to uphold the arbitrator's decision is erroneous based on the actual language of the arbitration award.

The second problem with Sulfo's contention is the failure to support it by any citation to legal authority. "[T]his Court will not search for authority to support a party's position, and the failure to cite authority in support of an issue results in its being deemed abandoned on appeal."<sup>10</sup>

Even accepting the well recognized precept that competent parties are free to contract for whatever terms they wish<sup>11</sup>, Sulfo cannot overcome the fact that the arbitration award only precludes Schmoyer from using or disseminating confidential or proprietary information or trade

---

<sup>10</sup> *Flint City Council v Mich*, 253 Mich App 378, 393 n 2; 655 NW2d 604 (2002).

<sup>11</sup> *Wilkie v Auto-Owners Ins, Co*, 469 Mich 41, 62; 664 NW2d 776 (2003).

secrets that he obtained while with Sulfo. Schmoyer left Sulfo in November of 2003 and did not become associated with SAT until 2005. Sulfo's members acknowledged that the sulfonation process they developed was a matter of trial and error and that Schmoyer lacked access to changes in their process, equipment or use after the working relationship was severed. Sulfo failed to demonstrate that Schmoyer used any confidential or proprietary information in his work with SAT. Williams, Aikens and Radke specifically averred that they received no direction or input from Schmoyer and developed SAT's sulfonation process and equipment based on information obtainable in the public domain and through publications and manuals of equipment suppliers in the manufacturing and plating industry. Even if Sulfo and Schmoyer negotiated or contracted to sell his "general knowledge," there is no restriction on being the recipient of the bad end of such a bargain. To suggest that Sulfo paid Schmoyer for all of his past, current and future "general knowledge" of information that was readily available and accessible for free to the general public suggests a poor or, at least, inadvisable use of Sulfo's monetary resources. Finally, Sulfo fails to recognize the distinction between what was "sold" or purchased from Schmoyer and what was legally restrained or restricted from use, in accordance with the actual language of the arbitration award.

Finally, Sulfo takes issues with the trial court's determination that Schmoyer and SAT did not violate or usurp its trade secrets. A "trade secret" is statutorily defined as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that is both of the following:

(i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>12</sup>

In accordance with MUTSA, the term "misappropriation" is defined as either of the following:

(i) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means.

(ii) Disclosure or use of a trade secret of another without express or implied consent by a person who did 1 or more of the following:

(A) Used improper means to acquire knowledge of the trade secret.

(B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was derived from or through a person who

---

<sup>12</sup> MCL 445.1902(d).



had utilized improper means to acquire it, acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or derived from or through a person who owed a duty to the person to maintain its secrecy or limit its use.

(C) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.<sup>13</sup>

To be deemed a “trade secret,” “the information must, of necessity, be a secret. Trade secrets do not ‘encompass information which is readily ascertainable, i.e., capable of being acquired by competitors or the general public without undue difficulty or hardship.’”<sup>14</sup> In a trade secrets case, the burden of proof is on the plaintiff to plead and prove “the specific nature of the trade secrets.” “A party alleging trade secret misappropriation must particularize and identify the purported misappropriated trade secrets with specificity.”<sup>15</sup>

First and foremost, Sulfo has failed to demonstrate the misappropriation or use of a trade secret by Schmoyer. Contrary to Sulfo’s assertions, the overwhelming evidence indicated that SAT did not obtain information from Schmoyer regarding Sulfo’s particular process of sulfonation and that SAT precluded his participation in the design and engineering of their process. The testimony demonstrated that much of the information obtained by SAT and its various members was through public sources or trial and error and thus, could not constitute the use of a “trade secret.” Aikens denied any knowledge of the intricacies of Sulfo’s system and testified regarding the inherent simplicity of the sulfonation process and the ability to develop a system based on publically available information. Although Dwayne Back disputed the simplicity of designing and implementing such a process, such credibility determinations are for the trier of fact.<sup>16</sup> Gladchun acknowledged that SAT’s sulfonation system was not identical to that of Sulfo, but was merely “in principal the same system.”

Second, other individuals, such as Don Corning, were not subject to any confidentiality agreement with Sulfo. Corning freely came and went from their facility, worked on their equipment without compensation, and was not restrained in any manner from disclosing information he obtained from that association, demonstrating a rather lackadaisical approach on the part of Sulfo to protecting confidential information.

Finally, and perhaps most devastating to their position, is the fact that Sulfo never fully explains what about its process comprised a “trade secret.” It suggests its particular

---

<sup>13</sup> MCL 445.1902(b).

<sup>14</sup> *Dura Global Technologies, Inc v Magna Donnelly Corp*, 662 F Supp 2d 855, 859 (ED Mich, 2009), quoting *Kubik, Inc v Hull*, 56 Mich App 335, 347-348; 224 NW2d 80 (1974).

<sup>15</sup> *Id.* (internal citations omitted).

<sup>16</sup> *Ambs*, 255 Mich App at 651.

configuration of the machinery was a “trade secret,” but the overall process of sulfonation to a large extent dictates the sequence and type of equipment required. All of the equipment used by both Sulfo and SAT was readily available in the public domain, advertised by the individual vendors, and were not demonstrated to have been built to any unusual specifications. As the parties all acknowledged that the sulfonation process is a matter of trial and error and dependent on the particular characteristics of the item to be treated, there was no assertion that Schmoyer or SAT was using a formulation specifically developed and verified by Sulfo.

The same reasoning is applicable to any claims by Sulfo that the identity of its vendors and clients comprised trade secrets. While the parties used many of the same vendors, they were all identified as advertising their services in the public domain and recognized within the manufacturing industry as predominant in their respective fields. Williams specifically denied that Schmoyer suggested he use any particular vendor and that Williams determined which suppliers SAT would use based on his own previous experience and research.

Addressing knowledge obtained regarding Sulfo’s customers, Aikens acknowledged knowing the identity of one customer because they advertised and were a well-known automotive supplier. Regarding contact with Alfmeier, a specific customer of Sulfo, Aikens’ undisputed testimony indicated that SAT obtained this contact through Wallace and Global Tech, having met an individual named Dino Ferhatovic an employee of Inergy. According to documentary evidence and Aikens’ testimony, Ferhatovic suggested that Wallace communicate with Alfmeier and gave SAT “a list of all of Energy’s [sic] customers.” Dwayne Back acknowledged that Sulfo had only one customer, Inergy Automotive, before Schmoyer left. As it is uncontested that the one Sulfo customer that Schmoyer was privy to before terminating his association with Sulfo was identified and procured through other individuals, there is no support for the contention that such information was attained through inappropriate means.

Because there is simply no evidence, even assuming the involvement of trade secrets, to sustain Sulfo’s contention that Schmoyer or SAT misappropriated or disclosed any information or materials, Sulfo’s claims must fail as a matter of law.

Affirmed.

/s/ Michael J. Talbot  
/s/ David H. Sawyer  
/s/ Michael J. Kelly